

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOYCE MATTUCCI)	
Claimant)	
VS.)	
)	Docket Nos. 213,286 & 225,025
WESTERN STAFF SERVICES and)	
HOBBY LOBBY)	
Respondents)	
AND)	
)	
TRAVELERS INSURANCE COMPANY and)	
CNA INSURANCE COMPANIES)	
Insurance Carriers)	

ORDER

This case comes before the Board on remand from the Court of Appeals. The Board heard oral argument on November 3, 2000.

APPEARANCES

Stephen J. Jones of Wichita, Kansas, appeared on behalf of claimant. D. Steven Marsh of Wichita, Kansas, appeared on behalf of respondent Hobby Lobby and its insurance carrier, CNA Insurance Companies.

ISSUES

The Board had, in an Order of May 12, 1999, determined that claimant was entitled to benefits for a 5 percent permanent partial disability to her right upper extremity. The Board also determined claimant was a full-time employee with an average weekly wage of \$210. The parties appealed the Board's decision. The Court of Appeals affirmed the conclusion that claimant has a 5 percent permanent disability but reversed the finding that claimant was a full-time employee. The Court of Appeals ruled claimant was a part-time employee earning \$5.25 per hour and remanded the case with directions to determine the claimant's average weekly wage as a part-time employee and calculate benefits accordingly.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes claimant's average weekly wage, calculated as a part-time employee, was \$176.41 per week.

Findings of Fact

Based on time cards introduced as Exhibit 2 to the preliminary hearing of August 7, 1997, claimant worked for respondent from Saturday, May 31, 1997, through Wednesday, June 25, 1997. June 25, 1997, was the date of accident and claimant worked 1.28 hours that day. During the 25 days she worked preceding the date of accident, claimant worked 119.96 hours. This total does not include the 1.28 hours claimant worked on the date of accident. Claimant earned \$5.25 per hour.

Conclusions of Law

1. For a part-time employee, K.S.A. 44-511(b)(4) provides that the wage shall be calculated pursuant to paragraph (5) of that same section. Paragraph (5) provides:

[T]he average gross weekly wage shall be the gross amount of money earned during the number of calendar weeks so employed, up to a maximum of 26 calendar weeks immediately preceding the date of the accident, divided by the number of weeks employed

2. The Board concludes claimant's average weekly wage is \$176.41 per week. Claimant worked a total of 3.57 weeks (25 days divided by 7 days a week) preceding the date of accident and during that 3.57 weeks earned \$629.79 or \$176.41 per week.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the claimant is entitled to benefits calculated from an average weekly wage of \$176.41.

WHEREFORE AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Joyce Mattucci, and against the respondent, Hobby Lobby, and its insurance carrier, CNA Insurance Companies, for an accidental injury which occurred June 25, 1997, and based upon an average weekly wage of \$176.41, for 10.5 weeks at the rate of \$117.61 per week or \$1,234.91 for a 5% permanent partial disability of the right upper extremity, all of which is presently due and owing in one lump sum less amounts previously paid.

The Appeals Board also approves and adopts all other orders entered by the Award not inconsistent herewith.

IT IS SO ORDERED.

Dated this ____ day of November 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stephen J. Jones, Wichita, KS
D. Steven Marsh, Wichita, KS
William L. Townsley, III, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director